

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

December 10, 2013 at 9:31 A.M.

1. [13-34203](#)-B-13 MADELIN DRUSE
FHS-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-12-13 [[10](#)]

MARJORIE CRAFT VS.

Tentative Ruling: The debtor's opposition is overruled. The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) in order to permit movant to obtain possession of the real property located at 8475 Muletown Road, Igo, Shasta County, California (the "Property") in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Cause for the modification exists because the movant acquired title to the Property prior to the date of the filing of the petition, which title is evidenced by the Grant Deed executed by Redding Mortgage Investments, Inc. on April 24, 1998, identifying the movant as the grantee (the "Grant Deed") (Dkt. 14 at 3). The movant also has a judgment for possession of the Property (the "Judgment") and a writ of possession for the Property from the Shasta County Superior Court, arising from a proceeding for unlawful detainer (Dkt. 14 at 15, 18).

The court does not find that 11 U.S.C. § 326(b)(22) is applicable in this case, as the movant has not shown that the Judgment is for unlawful detainer of a property on which the debtor resided as a tenant under a lease or rental agreement. The movant admits that there was no lease or rental agreement governing the debtor's tenancy and that the debtor resided on the Property solely with the movant's consent.

The debtor argues that the court should find that the Judgment is void based on alleged fraud by the movant in connection with the state court unlawful detainer proceeding. The debtor also argues that the court should deny the motion because the debtor allegedly has a potential claim for retaliatory eviction pursuant to 42 U.S.C. § 1983. The debtor overlooks the fact, however, that a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of such claims. As stated by the Ninth Circuit Bankruptcy Appellate Panel in In re Luz Intern., Ltd., 219 B.R. 837, 842 (9th Cir. BAP 1998):

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay

hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. See In re Johnson, 756 F.2d 738, 740 (9th Cir.), cert. denied, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.") (citation omitted); In re Ellis, 60 B.R. 432, 436 (B.A.P. 9th Cir. 1985) ("In any case, stay litigation is not the proper vehicle for determination of the nature and extent of those rights."); Grella, 42 F.3d at 33 ("[W]e find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect, and ... a court hearing a motion for relief from stay should seek only to determine whether the party seeking relief has a colorable claim to property of the estate."); see also, 3 Collier on Bankruptcy ¶ 362.08 [6], 362-106 (15th ed. rev.1997).

The court finds that the movant has shown that she has a colorable claim to the Property, based on the Grant Deed and the Judgment. If the debtor believes that either the Grant Deed or the Judgment is invalid or void, the proper forum for litigating that issue is the court from which the Judgment issued. If the debtor believes that she has a claim against the movant under 42 U.S.C. § 1983, the proper forum for litigating such a claim is the United States District Court.

The court will issue a minute order.

2. [13-26082](#)-B-13 LINDA DIXON
WSS-3

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-5-13 [[68](#)]

AUBURN INVESTORS, LLC VS.

Tentative Ruling: The motion is dismissed without prejudice.

There is no evidence on the docket that the motion was properly served, as the movant failed to file a proof of service for the motion. The court acknowledges that the debtor has filed written opposition to the motion and has not raised insufficient service as an issue in connection with this motion. However, there is no evidence that the chapter 13 trustee, a necessary party to the motion, was served.

The court will issue a minute order.

3. [13-31989](#)-B-13 MARK VASQUEZ
RCO-2

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-23-13 [[25](#)]

STATE FARM BANK, FSB VS.

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because the movant has failed to show that a pre-petition foreclosure sale occurred or that it is entitled

to retroactive annulment of the automatic stay. First, although the court acknowledges that the creditor did not receive notice of the bankruptcy filing until after the foreclosure sale was completed, the petition was filed before the sale occurred. According to the docket, the debtor's petition was filed on September 12, 2013 at 12:57 p.m. (Dkt. 1). The declaration filed in support of the motion (Dkt. 27) states that the "movant caused a valid foreclosure sale to occur on September 12, 2013 at approximately 3:08 p.m." As such, the foreclosure sale occurred post-petition.

Second, the movant's request for retroactive annulment of the automatic stay is denied without prejudice because the movant has failed to cite to or analyze the relevant Ninth Circuit authority in support of such a request. LBR 9014-1(d) (5).

The court notes that although no party has filed written opposition to the motion, absence of opposition does not equal entitlement to judgment. A party is not entitled to judgment simply because no one opposes. All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88, (B.A.P. 9th Cir. 2007) ("...default does not entitle a plaintiff to judgment as a matter of right or as a matter of law.").

The court will issue a minute order.

4. [13-33289](#)-B-13 DANA STONE
JHW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-31-13 [[15](#)]

DAIMLER TRUST VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to obtain possession of the leased vehicle, a 2011 Mercedes Benz C300 (VIN WDDGF5EB8BR158966) (the "Vehicle"), to dispose of the Vehicle pursuant to applicable non-bankruptcy law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Vehicle is leased by the debtor, that the debtor has remained in possession of the Vehicle while not making payments that are contractually due, and that the debtor's chapter 13 plan does not provide for the movant's claim. The foregoing constitutes cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1).

The court will issue a minute order.